

GAHC010164772024



2024:GAU-AS:11277

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : AB/2183/2024

RAFIQUL ISLAM AND 16 ORS
S/O EACHAK ALI

2: GULZAR HUSSAIN
S/O HAZARAT ALI

3: NABI HUSSAIN
S/O HAZARAT ALI

4: AMINA KHATUN
D/O GULZAR HUSSAIN

5: HAZARAT ALI
S/OLT. JUNAF ALI

6: ANISHA KHATUN
W/O JAKIR HUSSAIN

7: JAGIR ALI
S/O HAZARAT ALI

8: DILDAR HUSSAIN
S/O HAZARAT ALI

9: BAHARUL ISLAM
S/O ECHAK ALI

10: REHANA BEGUM
W/O BAHARUL ISLAM

11: JAMINA KHATUN
W/O RATIKUL ISLAM

12: MD. IKRAMUL ISLAM

S/O ECHAK ALI

13: SAIDUL ISLAM
S/O ECHAK ALI

14: HABIJUL ISLAM
S/O ECHAK ALI

15: OHIJUL ISLAM
S/O ECHAK ALI

16: HAZERA KHATUN
W/O REJJAK ALI

17: KULSUMA KHATUN
W/O SOFIQUL ISLAM
ALL ARE FROM VILL- FATASIMOLU
P.S. ORANG

DIST. UDALGURI (BTR)
ASSA

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR H R CHOUDHURY, A S PRODHAN, S. TALUKDAR

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 19-11-2024

Heard Mr. H.R. Choudhury, learned counsel for the petitioner Nos. 1. Rafiqul Islam, 2. Gulzar Hussain, 3. Nabi Hussain, 4. Amina Khatun, 5. Hazarat Ali, 6. Anisha Khatun, 7. Jagir Ali, 8. Dildar Hussain, 9. Baharul Islam, 10.

Rehana Begum, 11. Jamina Khatun, 12. Md. Ikramul Islam, 13. Saidul Islam, 14. Habijul Islam, 15. Ohijul Islam, 16. Hazera Khatun and Kulsuma Khatun, who have filed this application under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 with prayer for pre-arrest bail as they are apprehending arrest in connection with Dhekiajuli Police Station Case No. 135/2024 under Sections 190/190(2)/190(3)/118(2)/109/132/304/76 of Bharatiya Nyaya Sanhita, 2023

2. Heard Mr. K. Baishya, learned Additional Public Prosecutor, Assam for the respondent State.

3. The FIR unfolds that SI(UB) Priyanshu Buraguhain went to execute a warrant of arrest vide No. NDPACT/84/2024 arising out of GD-12 and arrest Rafiqul Islam. The informant along with his team visited Rafiqul Islam's house at about 1.30 AM. At that time, the petitioners along with the co-accused armed with dao, lathi resisted the police party and the informant along with four office assistants sustained injuries in the process. The accused named in the FIR as well as the petitioners facilitated the escape of Rafiqul Islam and also tried to strangulate UBC Sri Giri Das and ripped off his uniform and assaulted Md. Nurul Islam of 12 APBN and snatched his 5.56 INSAS Rifle and fired one bullet. A video recording of this incident was done by UBC 666 Md. Luthfur Rahman in his mobile phone and has been loaded in a compact disk and annexed along with the FIR.

4. Learned Additional Public Prosecutor has raised serious objection stating that four police personnel have sustained injuries.

5. I have considered the submissions at the bar with circumspection. I have also scrutinized the Case Diary. Indeed four police personnel have sustained

injuries.

6. It is submitted on behalf of the petitioners that the petitioner No. 1 Rafiqul Islam is not an accused in connection with NDPS Case No. 84/2022 but despite ardent requests and pleadings by Rafiqul Islam, the informant and the Investigating Team with highhandedness tried to apprehend and arrest the petitioner No. 1, which resulted in the unfortunate incident. It is submitted that arresting or trying to arrest an innocent person was a deplorable act which also affects the right to liberty of an innocent person.

7. On the other hand, it is also submitted that the aggressive act of the villagers was not justified. During investigation, incriminating materials have emerged against the present petitioners. However, I have considered the fact that the petitioner Nos. 4. Amina Khatun, 6. Anisha Khatun, 10. Rehana Begum, 11. Jamina Khatun, 16. Hazera Khatun and 17. Kulsuma Khatun are women, and their custodial interrogation may not be required as investigation has progressed substantially and their petition with prayer for pre-arrest bail is allowed.

8. In the event of their arrests, the petitioner Nos. 4. Amina Khatun, 6. Anisha Khatun, 10. Rehana Begum, 11. Jamina Khatun, 16. Hazera Khatun and 17. Kulsuma Khatun are to be enlarged on bail on furnishing a bail bond of Rs.50,000/- (Rupees Fifty Thousand) each with a suitable surety of like amount to the satisfaction of the arresting authority under the conditions that :

(i) the petitioner Nos. 4, 6, 10, 11 and 16 shall appear before the Investigating Officer within one week and cooperate with the investigation,

(ii) the petitioner Nos. 4, 6, 10, 11 and 16 shall refrain from such activities with which they are alleged,

(ii) the petitioner Nos. 4, 6, 10, 11 and 16 shall not tamper with the evidence and influence the witnesses and,

(iv) the petitioner Nos. 4, 6, 10, 11 and 16 shall not leave the jurisdiction of the Court without prior permission.

9. On breach of any of the bail conditions, pre-arrest bail order shall automatically stand cancelled.

10. The pre-arrest bail application of the other petitioners, stands rejected at this stage.

11. In terms of the above observation, this Anticipatory Bail application stands disposed of.

12. Send back the Case Diary.

JUDGE

Comparing Assistant